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IN THE
COURT OF APPEALS OF INDIANA

SHERI G. VANCE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 35A02-0512-CR-1214
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Mark A. McIntosh, Judge
Cause No. 35D01-0408-FA-202

October 12, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Sheri Vance appeals her conviction for Class A felony aiding in dealing in cocaine. We affirm.

Issue

Vance raises one issue, which we restate as whether the trial court properly admitted into evidence an audiotape that included statements by a confidential informant ("CI") who did not testify at trial.

Facts

On March 27, 2003, a CI arranged to purchase cocaine from Bobby Hall. In turn, Hall arranged to purchase 5.91 grams of cocaine from Vance with money from the CI. To facilitate the transaction, the CI was supposed to supply the money to Hall, Hall would meet with Vance and purchase the cocaine, and the CI would return and receive the cocaine from Hall. Apparently, Vance arrived in a silver truck with another female passenger before the CI provided Hall with the money. Vance left indicating she would go to the post office and return. In the meantime, the CI arrived and provided Hall with the money. Vance then returned, and Hall got into her truck. Vance drove around, and she and Hall exchanged the cocaine for the money. Hall got out of the truck and met the CI at his car. Hall asked for a "couple lines" of the cocaine in exchange for getting it for the CI. Tr. p. 274. The CI agreed.

On August 12, 2004, the State charged Vance with Class A felony aiding in the dealing of cocaine. At the jury trial, Hall testified against Vance. In exchange for his testimony, the State reduced a charge of Class A felony dealing in cocaine to Class D

felony possession of cocaine and dismissed an habitual substance offender enhancement. Vance was convicted of as charged. She now appeals.

Analysis

Vance argues that the admission of the audiotape recording of a conversation between the CI and Hall immediately before and after Hall purchased the cocaine from Vance was inadmissible hearsay.[1] The audiotape contains two brief exchanges between Hall and the CI only.[2] In the first, Hall explained that "she" went to the post office, that he needed $350, and that the cocaine was good. Exhibit 2. Hall instructed the CI to wait for him at the nearby fire station, and the CI counted money for Hall. In the second exchange, the CI indicated that he had been concerned Hall was not going to return, told Hall that he would get him marijuana, and allowed Hall to have a couple of lines of the cocaine. Hall indicated that "she" trusted him. Exhibit 2.

Even assuming that Vance is correct in that the tape contains inadmissible hearsay, she has not established that her substantial rights were prejudiced. As Vance acknowledges, an error may not require reversal where its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect a party's substantial rights. Bassett v. State, 795 N.E.2d 1050, 1054 (Ind. 2003). "[W]here the offending evidence is merely cumulative of other properly admitted evidence, the

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[1] Vance makes no specific argument regarding the violation of her Sixth Amendment rights under Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004).

[2] Hall does not refer to Vance by name on the audiotape, and Vance's voice is not heard on the recording.

substantial rights of the party have not been affected, and we deem the error harmless." Smith v. State, 839 N.E.2d 780, 784 (Ind. Ct. App. 2005).

Vance contends that the audiotape corroborated Hall's testimony that Vance left the area as the CI arrived and that Hall's request for a couple of lines supported the State's theory that Hall did not supply the cocaine. First, Vance stipulated that Hall delivered cocaine to the CI on March 27, 2003. Also, one of the officers monitoring the transaction between Hall and the CI testified that he saw Vance driving a silver truck, that she left and returned fifteen minutes later and another woman was in the truck, and that Hall got into the truck. Another officer confirmed this testimony and indicated that after he saw the silver truck for a second time, he saw Hall walk up to the CI's car. Finally, Hall's trial testimony was consistent with the conversation recorded by the CI, and Hall's trial testimony positively identified Vance as his supplier. Although Vance admitted spending time with Hall that day, she denied supplying him with cocaine.

To the extent that Vance contends that the audiotape improperly corroborates Hall's testimony, the argument is not available on appeal. Immediately before the parties began their opening statements, Vance objected to the admissibility of the tape. She argued that if the CI was not going to testify "that would make his part of the tape hearsay. It's going to be real difficult to play a tape that supposed to be conversation between two (2) people, one of which, if his version is heard at all, constitutes hearsay." Tr. p. 198. She went on to argue, "if Mr. Hall intends to testify I believe that whatever testimony that the State of Indiana intends to solicit that might be on the tape they are perfectly able to do that and then I can cross-examine." Id. In a subsequent objection,

Vance explained how difficult it would be for the jury to listen to "one-half of a conversation." Id. at 302.

Vance's concession that Hall's portion of the tape was admissible amounts to invited error. The doctrine of invited error is grounded in estoppel and precludes a party from taking advantage of an error that he or she commits, invites, or which is the natural consequence of his or her own neglect or misconduct. Wright v. State, 828 N.E.2d 904, 907 (Ind. 2005). Because Vance created this situation by agreeing that Hall's portion of the tape was admissible, she cannot now take advantage of that error on appeal. See id.

Conclusion

Any error in the admission of the audiotape did not affect Vance's substantial rights. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.